

1  
2  
3  
4  
5  
6  
7  
8                   UNITED STATES DISTRICT COURT  
9                   WESTERN DISTRICT OF WASHINGTON  
10                  AT TACOMA

11                  DAVID L. LAIL (DECEASED),  
12                  Plaintiff,

13                  v.

14                  MICHAEL ASTRUE, Commissioner of Social  
15                  Security,  
16                  Defendant.

Case No. C06-5317 FDB

ORDER FOR ATTORNEY FEES  
PURSUANT TO 42 U.S.C. § 406(B)

17                  This matter comes before the Court on Plaintiff's motion for authorization of attorney fees  
18 under 42 U.S.C. § 406(b). Counsel for Plaintiff seeks a gross fee award of \$8,157.45. The  
19 Commissioner has filed a response to Plaintiff's motion indicating Defendant has no objection to  
20 the fee request.

21                  Attorney's fees may be awarded to a successful social security claimant's lawyer for his or  
22 her representation before a court pursuant 42 U.S.C. §§ 406(b); Straw v. Bowen, 866 F.2d 1167 (9<sup>th</sup>  
23 Cir. 1989). Plaintiff must apply to the Social Security Administration for an award of fees for  
24 representation at the administrative level. 42 U.S.C. § 406(a); Stenswick v. Bowen, 815 F.2d 519  
25 (9<sup>th</sup> Cir. 1987). Previously, this Court awarded Plaintiff's counsel \$3,814.20 pursuant to the Equal  
26 ORDER - 1

1 Access to Justice Act (EAJA). Plaintiff's counsel now petitions for a gross fee of \$8,157.45.

2 Under 42 U.S.C. § 406(b)(1)(A) the court can only award fees up to the 25 percent withheld  
3 from the past-due benefits. This 25 percent limit applies to the total of EAJA and § 406(b) fees  
4 combined. See, Morris v. Social Sec. Admin., 689 F.2d 495, 497-98 (4<sup>th</sup> Cir. 1982); Webb v.  
5 Richardson, 472 F.2d 529, 536 (6<sup>th</sup> Cir. 1972); Dawson v. Finch, 425 F.2d 1192, 1195 (5<sup>th</sup> Cir.  
6 1970).

7 Plaintiff was awarded \$38,573.00 in past due benefits. Twenty-five percent of past due  
8 benefits is \$9,643.25. The Court concludes that the attorney's fees sought by counsel are reasonable  
9 within the meaning of § 406(b). Plaintiff's counsel is entitled to a gross attorney fee of \$8,157.45.  
10 Subtracting the \$3,814.20 previously awarded EAJA fees, counsel is entitled to a net award of  
11 \$4,343.25.

12 ACCORDINGLY;

13 IT IS ORDERED:

14 Plaintiff's Motion for an Award of Attorney's Fees [Dkt #33] is **GRANTED**. Plaintiff's  
15 counsel is awarded 42 U.S.C. § 406(b) gross attorney fees in the sum of \$8,157.45. The  
16 Commissioner is directed to subtract the \$3,814.20 previously awarded EAJA fees and send to  
17 Plaintiff's counsel an award of \$4,343.25., minus any applicable processing fees as allowed by  
18 statute.

19

20 DATED this 29<sup>th</sup> day of April, 2009.

22   
23 \_\_\_\_\_  
24 FRANKLIN D. BURGESS  
25 UNITED STATES DISTRICT JUDGE

26 ORDER - 2